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# In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 329

C. F. ROUTZAHN, COLLECTOR OF INTERNAL REVENUE of the United States for the Eighteenth District of Ohio, petitioner

*v.*

WILLARD STORAGE BATTERY COMPANY, A CORPORATION

*ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE PETITIONER

### OPINIONS BELOW

The opinion of the District Court for the Northern District of Ohio (R. 32) is not reported.[1] The opinion of the Circuit Court of Appeals (R. 154) is reported in 65 F. (2d) 89.

[1] An opinion overruling motions to dismiss, not in the record, is not officially reported but may be found in 8 Am. Fed. Tax Reports 11274.

## JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 9, 1933 (R. 154). The petition for a writ of certiorari was filed August 9, 1933, and was granted October 9, 1933. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

## QUESTIONS PRESENTED

1. Whether Section 424 of the Revenue Act of 1928 requires as a prerequisite to a suit for the recovery of automobile accessories taxes that the decision of the Commissioner of Internal Revenue be first obtained with respect to whether the claimant has himself borne the burden of the tax?

2. Whether the chief or principal use of an article determines whether it is "primarily adapted" for use on automobiles, within the meaning of Section 900 of the Revenue Act of 1921 and Section 600 of the Revenue Act of 1924.

## STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set out in the Appendix, *infra*, pp. 22–27.

## STATEMENT

Five actions at law were commenced in the District Court for the Northern District of Ohio for the recovery of manufacturer's excise taxes paid on the manufacture and sale of electric storage bat-

teries for the taxable periods September 1922 to February 1926, inclusive, in the aggregate amount of $744,023.58, and interest (R. 22).

A motion to dismiss was filed in each case (R. 9, 94, 108, 122, 135), upon the ground that the court was without jurisdiction. These motions were overruled and exceptions were noted (R. 10). The five actions were consolidated for trial (R. 15, 96, 110, 124, 138), and the case was tried before the District Court, jury being waived (R. 14, 98, 112, 125), upon stipulations of facts (R. 13, 96, 111, 125, 138), and certain oral testimony and documentary evidence. The court made findings of fact (R. 22), from which the following is taken (R. 23–24):

> 9. That none of the storage batteries upon the sales of which the taxes in suit were paid were sold to manufacturers of automobiles, but the majority of them were sold by the plaintiff to jobbers, distributors, and storage battery and electrical service dealers, and the plaintiff does not know, nor can it ascertain, the uses to which the said storage batteries so sold by it were put.
>
> 10. That storage batteries, prior to their use on automobiles, were commercial commodities widely, generally and commonly sold for many different uses.
>
> 11. That the first storage batteries which were purchased for use on automobiles were the same in all essential respects as the batteries which had been commonly and widely

used for a number of years for many other purposes.

12. That the automobile manufacturer adjusted the space in the automobile to fit the storage battery and the storage battery was not designed specially for use on the automobile.

13. That the parts of the electric storage batteries upon which the taxes in suit were paid were much the same as the parts of the storage batteries manufactured by the predecessors of the plaintiff in 1895 or 1899, the only changes being those naturally due to the refinement in art of manufacture during that period and to competition in price. None of these refinements made the batteries peculiarly adaptable for use only on automobiles, but they continued to be equally adaptable for use on any device where the duty requirements were the same.

14. That the storage batteries manufactured by the plaintiff and upon which the taxes in suit were paid were commercial commodities which were commonly, generally and widely manufactured and sold for a great many different purposes. There was no peculiar characteristic of these batteries which rendered them not such a commercial article as would ordinarily be sold for general use for a great many different purposes.

15. That the uses of said electric storage batteries, other than the use on automobiles, were not incidental to the use on automobiles.

16. That the storage batteries manufactured by the plaintiff, and upon which the

taxes in suit were paid, were not peculiarly adaptable only for automobiles, but were equally well adaptable for use in stationary engines, marine engines, tractors, radio, and for a great many other purposes where the duty required was the same, and were so used. Nor were they primarily adaptable for use only on automobiles. They were interchangeable for use in connection with automobiles or for use in connection with a great many other devices where the duty requirements were the same.

Upon these findings the court concluded as a matter of law that the batteries were not parts or accessories within the meaning of the statutes and that the taxes were illegally assessed and collected. (R. 25.) Judgments were accordingly entered for the respondent. (R. 31, 99, 113, 127, 140.)

The five actions were consolidated for the purpose of appeal (R. 141), and the Circuit Court of Appeals for the Sixth Circuit affirmed the judgments of the District Court (R. 154).

## SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In sustaining the jurisdiction of the District Court notwithstanding the failure of the respondent to comply with the provisions of Section 424 of the Revenue Act of 1928.

2. In ignoring the chief or principal use as being determinative of the question whether the article is primarily adapted for use on automobiles.

## SUMMARY OF ARGUMENT

### I

The judgment of the District Court was improper in the absence of a finding that the respondent had established to the satisfaction of the Commissioner of Internal Revenue that the burden of the tax was actually borne by the respondent. Section 424(a)(2) of the Revenue Act of 1928 (*infra*, p. 23) confides to the Commissioner the power to determine whether a claimant has actually borne the burden of the tax. And even if we be wrong in that contention, this respondent must fail because of the absence of any finding of fact or conclusion of law by the trial court that this respondent did actually bear the burden of the tax.

### II

The courts below erred in ignoring the chief, principal, and notorious use of storage batteries. *Universal Battery Co.* v. *United States*, 281 U.S. 580, approving the Treasury regulations in respect of automobile parts and accessories, cannot be interpreted to exclude as the criterion the chief and principal use of a product. *Eaton* v. *American Chain Co.*, 63 F. (2d) 783 (C.C.A. 2d). Cases in which automobile storage batteries have been held to be not taxable have been based upon findings of equal adaptation and have ignored chief or principal use. Congress intended to use the expression "parts or accessories" in the ordinary, popular,

and commercial sense. *Weir* v. *McGrath,* 52 F. (2d) 201 (S.D. Ohio), affirmed *per curiam,* 41 F. (2d) 1021 (C.C.A. 6th). The Revenue Act of 1932 shows that Congress wished to correct a too technical interpretation of the statute by the courts.

## ARGUMENT

### I

THE JUDGMENT OF THE DISTRICT COURT WAS IMPROPER IN THE ABSENCE OF A FINDING THAT THE RESPONDENT HAD ESTABLISHED TO THE SATISFACTION OF THE COMMISSIONER OF INTERNAL REVENUE THAT IT ACTUALLY BORE THE BURDEN OF THE TAX

Regardless of the applicability of Sections 900 and 600 of the Revenue Acts of 1921 and 1924, respectively, we contend that Section 424 of the Revenue Act of 1928 (*infra,* pp. 23–24) prevents recovery by this respondent. This section forbids the refund of automobile parts or accessories taxes to a manufacturer unless—

> *It is established to the satisfaction of the Commissioner* that such amount * * * was not collected, directly or indirectly, from the purchaser or lessee, or that such amount, although collected from the purchaser or lessee, was returned to him; * * *[2]

[2] Section 424 prescribes three other situations in which such refunds may be made: (1) If pursuant to a judgment of a court in a suit instituted prior to April 30, 1928; (2) if the amount is an overpayment of tax upon an article properly taxable; or (3) if the manufacturer has filed a bond to repay such portion of the refund as is not distributed to the purchasers of the articles.

In the instant case the Circuit Court of Appeals decided in effect that it was enough that the court then determine the legality or illegality of the tax, leaving the question as to whether the manufacturer had actually borne the burden of the tax to be settled later between the respondent and the Commissioner.

In the court below it was contended by the Government, as we now contend here, that Section 424 reserves to the Commissioner exclusive power to decide whether any claimant actually bore the burden of the tax. But if this Court shall not so decide, it is our further contention that in any event this respondent must fail because of failure to show that it actually bore the burden of the tax. This question is discussed in the brief for the Government in *United States* v. *Jefferson Electric Manufacturing Company,* No. 171, October Term, 1933. In that case the Government's contentions are the same as those we make here, except that in that case there was an attempt to show in court that the respondent bore the burden of the tax.

As was noticed by the court below, the purpose of Congress was to allow the refund of a tax illegally collected only if the manufacturer had not in effect passed the tax on to the consumer. We contend that the question whether a claimant has borne the burden of the tax is confided by statute to the discretion of the Commissioner of Internal Revenue, for no other reasonable reading can be made of a statute which forbids a refund unless "it is estab-

lished to the satisfaction of the Commissioner" that the amount was not collected directly or indirectly from customers.

In *American Chain Co.* v. *Eaton,* No. 196, October Term, 1933, the same question is involved. The Circuit Court of Appeals for the Second Circuit in that case did not rule upon the effect of Section 42 because it held that the product was taxable and that therefore the claimant could not recover, whether it or someone else had borne the economic burden. In the *American Chain case* the trial court held that the plaintiff had borne the burden of the tax. In our brief in the *American Chain case* we dispute the validity of that finding.

Whatever this Court may conclude as to the *American Chain case* and the *Jefferson Electric case,* the respondent must fail in this case, since there is no finding or holding that it bore the burden of the tax.

## II

### THE STATUTE IS APPLICABLE TO PARTS AND ACCESSORIES CHIEFLY OR PRINCIPALLY USED IN CONNECTION WITH AUTOMOBILES

The Circuit Court of Appeals held that it would not reverse the conclusion of the District Court that the storage batteries sold by the respondent were not parts or accessories of automotive vehicles within Section 900 of the Revenue Act of 1921 or Section 600 of the Revenue Act of 1924

(*infra*, p. 22), and that it could only inquire as to whether or not the evidence supported the findings."

It is our contention that the District Court erred in its construction of the statutes by ignoring the chief, principal, and notorious use of storage batteries in determining that the respondent's batteries were not primarily adapted for use on automobiles, and were therefore not taxable. This presented a question of law which should have been passed on below.

The testimony shows what would seem to be a matter of common knowledge that the greatest use of batteries is in connection with the starting and lighting of automobiles. (R. 49.) Few comparisons or statistics were produced to show the extent of other uses of batteries as described in testimony, such as road machines, marine engines, plows, gasoline shovels, tractors (R. 51); radios (R. 57); fire departments (R. 63); farm machinery (R. 74). None of the testimony does more than suggest that a limited number of storage batteries of the type used on automobiles were used in the taxable years in connection with other kinds of machinery.

A "part" is defined in Article 15 of Regulations 47 (*infra*, p. 24) as—

> any article designed or manufactured for the special purpose of being used as or to replace

[1] The principal findings thus referred to by the Circuit Court of Appeals are reprinted in the statement, *supra*, pp. 3–5.

> a component part of any such vehicle and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use and which is primarily adapted only for use as a component part of such vehicle.

Article 16 of Regulations 47 (*infra*, p. 25) defines an "accessory" as

> any article designed to be attached to or used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for use in connection with such vehicle, whether or not essential to its operation.

Section 900 of the Revenue Act of 1921 (*infra*, p. 22) was considered in *Universal Battery Co.* v. *United States*, 281 U.S. 580. This Court noticed the regulations issued under Section 900 which we have just referred to, and said (p. 583):

> This construction of those terms has been adhered to in the Internal Revenue Bureau for about ten years and it ought not to be disturbed now unless it be plainly wrong. We think it is not so, but is *an admissible construction. Certainly* it would be unreasonable to hold that articles equally adapted to a variety of uses and commonly put to such uses, one of which is use in motor vehicles, must be classified as parts or accessories for such vehicles. *And it would be also unreasonable to hold that articles can be so classified only where they are adapted solely for use in motor vehicles and are exclusively so used.*

> *Magone* v. *Wiederer*, 159 U.S. 555, 559. We think the view taken in the administrative regulations is reasonable and should be upheld. It is that articles primarily adapted for use in motor vehicles are to be regarded as parts or accessories of such vehicles, even though there has been some other use of the articles for which they are not so well adapted. (Italics ours.)

There is nothing in that language, or in the Regulations to which it refers, which says that chief, principal and notorious use cannot be determinative of the adaptability of a device; and we contend that in a case like this casual, dispersed uses should not be allowed to make invalid the collection of a tax which legislator and citizen alike must have thought due under Section 900.

The precise meaning of the term "primarily adapted" has caused a diversity of opinion in the courts. In *Eaton* v. *American Chain Co.*, 63 F. (2d) 783 (C.C.A. 2d), now pending as No. 196, October Term, 1933, the Circuit Court of Appeals discussed findings of the District Court very similar to those made by the District Court in the instant case, namely, that the article was used otherwise than with automobiles and was equally adaptable for such uses, and therefore was not "primarily adapted" for use on automobiles. In reversing the District Court's decision in favor of the taxpayer the Circuit Court of Appeals said (p. 786):

> It was concluded below that the primary adaptation rule, referred to in *Universal*

> *Battery Co. v. United States, supra,* has no application to cases where the appellee, by evidence of subsequent untaxed resales, shows two uses, one of which is the admitted principal use on automobiles and the other is a possible exempted use even though it be a diverted use. *We think such a conclusion ignores the chief or principal use as being determinative of the primary adaptation rule, referred to by the Supreme Court,* and it also assumes evidence of untaxed resales for possible diverted uses, sufficient to override the primary adaptation rule. (Italics ours.)

The *American Chain* decision, we submit, is correct in its conclusion that when Congress levied a tax upon "parts or accessories", it was intending to reach things commonly considered to be parts or accessories. The Regulations could not narrow the scope of the statutory language. When the Regulations refer to an article as "primarily adapted" they must mean that such article is one which is practically adapted to the automotive use and is principally used in that way. This is not to argue that the hammer which may be used in making automobile repairs is a part of the automobile. That kind of object is specifically excluded by Article 16 (*infra*, p. 25) as a "mere commercial commodity". But where, as here, no attempt was made by the taxpayer to show that uses other than the automotive use were the chief or principal use of the batteries, it seems to us the taxpayer should fail.

The decision below, and that in *McCaughn* v. *Electric Storage Battery Co.*, 63 F. (2d) 715 (C.C.A. 3d),[1] amount in substance to a holding that if the article has any other possible use than on automobiles it cannot be said to be "primarily adapted" for use on automobiles.[2] But the regulation does not say "exclusively adapted"; it is only "primarily adapted." The word plainly connotes that there may be a secondary use on other objects.[3] In the *American Chain case*, the taxpayer seeks to avoid the tax through a showing that the chains could be used on machines other than automobiles. But it is a wholly artificial construction to say that the automobile tire chain, a device familiar to everyone, is not an automobile accessory. And the

[1] Other cases in which it has been held under findings as to "equally adapted" uses that automobile storage batteries were not taxable are *General Lead Batteries Co.* v. *United States*, 60 F. (2d) 177 (C.Cls.); *Yale Storage Battery Co.* v. *United States* (S.D.Ind.), unreported, but see Vol. 1, Prentice Hall Fed. Tax Service (1931), par. 1343; *Philadelphia Storage Battery Co.* v. *Lederer*, 21 F. (2d) 320 (E.D.Pa.); *United States Light & Heat Corp.* v. *United States*, 3 F. Supp. 861 (C.Cls.); *Exalert Mfg. Co.* v. *United States*, 3 F. Supp. 873 (C.Cls.); *Universal Battery Co.* v. *United States*, 3 F. Supp. 878 (C.Cls.); *M. & M. Co.* v. *United States*, 3 F. Supp. 886 (C.Cls.).

[2] The Court of Claims in *Anthony Co.* v. *United States*, 36 F. (2d) 481, 482, said that "Evidence as to the proportionate number [of air pumps] used is relevant but not at all controlling—in fact, it is of comparatively little weight." We disagree of course with that conclusion, and we submit that if the chief or principal use is of any weight at all it must be of great weight.

situation is similar, we submit, with respect to the automobile storage battery.

In *Weir* v. *McGrath*, 52 F. (2d) 201 (S.D. Ohio), affirmed *per curiam*, 11 F. (2d) 1021 (C.C.A. 6th), a case involving the statute here under consideration, the court said (p. 204):

> Thus if the common, general, practical, predominating, and chief use of the carburetors is in connection with the operation of an automobile, the possible or occasional use in connection with other internal combustion gas engines will not defeat the construction that the carburetors were "automobile carburetors" or "parts" and within the classification or type of articles intended by Congress to be taxed.

In *Cole Storage Battery Co.* v. *United States*, 65 Ct.Cls. 161, 170, certiorari denied, 278 U.S. 641, where it was held that automobile storage batteries were taxable under Section 900 of the Revenue Acts of 1918 and 1921, the Court of Claims said:

> This case, in our opinion, turns upon the restricted issue as to whether a storage battery, especially adapted for and so designed and advertised as to meet the essential requirements of locomotive power, is a part or accessory of an automobile. The fact that a storage battery is available for use for a number of purposes other than for an automobile is not determinate of the issue. A variety of parts of an automobile are susceptible of use in other devices, and other

> parts, both as to form and functioning elements, existed long prior to the coming of the automobile itself. What seems to us to turn the contention is the fact that in a combination of various elements to function in a certain way the accomplishment of the purpose is only attainable where a gasoline engine is used by coupling certain elements up with a storage battery, and without its presence the mechanism is useless. We think, therefore, that where a manufacturer of storage batteries seeks the custom of the automobile trade, assures the latter of the especial qualities of his battery, and designs it as part of the automobile into which it is to be introduced, Congress intended by the taxing act to reach it as a source of revenue.

And in *Edison Storage Battery Co.* v. *United States*, 67 C.Cls. 543, 553, where it held that storage batteries manufactured, advertised, and sold for the supply of motive power in electrically propelled trucks were subject to the tax under Section 600 of the Revenue Act of 1924, the Court of Claims said:

> It is fair to assume that if Congress had intended in the use of the word "parts" to exempt the seller where the thing sold was used in connection with the operation of an automobile, automobile truck, or motor cycle, because of the fact that the article sold could be used for other purposes, or that only a small portion of the production of the seller was used in connection with automobiles, or automobile trucks, or because the article sold could be used for other purposes, or because

> it had been sold and used for other purposes before the passage of the act, * * * it would have stated as much in the act. Having failed to do this, it is fair to assume that it did not intend that a limited meaning should be given to the word "parts."

In these two cases it seems to us the Court of Claims took the proper view of the broad intent of Congress in taxing automobile "parts" or "accessories." The conclusion reached in these cases follows, we submit, this Court's decision in *Worth Bros. Co.* v. *Lederer*, 251 U.S. 507, where an excise tax was laid on the manufacture of "any part" of a shell. This Court was pressed with finely spun arguments, but said (p. 510):

> Congress did not intend to subject its legislation to such artificialities and make it depend upon distinctions so refined as to make a part of a shell not the taxable "part" of the law.

And see *Forged Steel Wheel Co.* v. *Lewellyn*, 251 U.S. 511; *Carbon Steel Co.* v. *Lewellyn*, 251 U.S. 501. Finally, this Court's decision in *Magone* v. *Wiederer*, 159 U.S. 555, cited in *Universal Battery Co.* v. *United States, supra*, took the view, with respect to an analogous question in a tariff case, that chief use is an important consideration. See also *Magone* v. *Heller*, 150 U.S. 70.

In the several cases in which it has been held that storage batteries for automobiles were not taxable as "parts or accessories" of automobiles, the

courts' conclusions were based on a "finding of fact" that the particular battery was not "primarily adapted" for use in connection with automobiles or was "equally adapted" for other uses. But as we have shown above, the regulations were not intended to limit the effect of the broad language of the statute which taxed "parts or accessories," and were not intended to require that the article be "exclusively adapted" for use on automobiles. The words in the regulations are to be given a sensible meaning, and so treated we contend that they do include one of the best known of automobile parts or accessories, the storage battery, an essential element of practically every automobile now running.

In cases where findings have been made that batteries were "equally adapted" for use other than in connection with an automobile, and this has been held the determinative fact, the courts have given undue weight, we submit, to varied and eccentric uses which have been suggested to them by proof, and they have ignored the chief or principal use which Congress had in mind when it taxed parts or accessories of automobiles. As a result they have held that the tax on the manufacture of the millions of automobile batteries actually used must fail. This, we submit, is too technical and too legalistic a construction of the statute and the regulations. Moving step by step and apparently logically, the lower courts have found themselves holding that a familar automobile part is "in fact"

not an automobile part. It seems unreasonable that members of Congress, when they voted for a bill taxing "parts or accessories" of automobiles, did not intend to tax a part or accessory familiar to all of them." Of course it is fundamental that words in a taxing statute should be given their ordinary and commonly understood meaning. *Woolford Realty Co.* v. *Rose*, 286 U.S. 319, 327; *Old Colony R. Co.* v. *Commissioner*, 284 U.S. 552, 560.

Section 606 (c) of the Revenue Act of 1932, c. 209, 47 Stat. 169, 262, specifically declares that storage batteries, tire chains, spark plugs, leaf springs, coils, and timers—

> which are suitable for use on or in connection with, or as component parts of, any of the articles enumerated in subsection (a) or (b) [automobiles, etc.] shall be considered parts or accessories for such articles, whether or not primarily adapted for such use.

Congress evidently thought that the court decisions had thwarted its intention to tax automobile

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" In *Weir* v. *McGrath*, 52 F. (2d) 201 (S.D.Ohio), affirmed *per curiam*, 41 F. (2d) 1021 (C.C.A. 6th), a case involving the question whether certain carburetors were automobile parts, the Court said (p. 204): "In giving such construction to the acts of Congress the rule is well settled that Congress must be deemed to use terms in their ordinary, popular, and commercial sense, rather than in a distinctive or technical sense, unless it clearly appear that the latter sense was intended. *Swan* v. *Arthur*, 103 U.S. 597, 598; *Maddock* v. *Magone*, 152 U.S. 368; *U.S.* v. *Buffalo Gas Fuel Co.*, 172 U.S. 339, 341."

parts or accessories. In Senate Report No. 665, 72nd Cong., 1st Sess., p. 44, it is said:

> The House bill contained a provision, which is retained by your committee, *to eliminate the effect of certain court decisions under which many parts and accessories have escaped tax under prior revenue acts on the ground that they were not "primarily adapted" for use on automobiles or trucks,* since they might be used on boats, tractors, etc. Under the bill, spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, if suitable for use on automobiles and trucks, will be taxable as parts or accessories whether or not "primarily adapted" for such use. As to other parts and accessories, the test of taxability will be the same as under the prior laws, since those enumerated represent the principal items as to which question has arisen, and to extend the list would result in the inclusion of articles whose use on automobiles and trucks may be minor[7] as compared with their other uses. (Italics ours.)

We submit, therefore, that the decision below, by ignoring the chief, principal, and notorious use of storage batteries as parts of automobiles, has frustrated the operation of what was intended to be a tax upon parts of automobiles as they were com-

[7]Apparently the Senate Committee thought that the principal use of a product determines its taxability as a part or accessory of an automobile, else references to "minor use" on automobiles would not have been included.

monly and generally known by Congress and citizen alike.

## CONCLUSION

The holding below disregarded the chief or principal use of a familiar mechanism when it held that the respondent's batteries were not primarily adapted to automobiles. For that reason its decision should be reversed. But regardless of the taxability of the batteries, the decision below should be reversed either (a) because the trial court had no jurisdiction until the Commissioner of Internal Revenue had ruled as to the incidence of the tax, or (b) because this respondent did not show that it actually bore the burden of the tax.

Respectfully submitted.

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NOVEMBER 1933.

## APPENDIX

Revenue Act of 1921, c. 136, 42 Stat. 227, 291:

SEC. 900. That from and after January 1, 1922, there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold or leased:

(1) Automobile trucks and automobile wagons (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), 3 per centum;

(2) Other automobiles and motorcycles (including tires, inner tubes, parts, and accessories thereto, sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum;

(3) Tires, inner tubes, parts, or accessories for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum.

* * * * *

Revenue Act of 1924, c. 234, 43 Stat. 253, 322:

SEC. 600. On and after the expiration of thirty days after the enactment of this Act there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following per-

centage of the price for which so sold or leased.

(1) Automobile truck chassis and automobile wagon chassis sold or leased for an amount in excess of $1,000, and automobile truck bodies and automobile wagon bodies sold or leased for an amount in excess of $200 (including in both cases tires, inner tubes, parts, and accessories therefor sold on or in connection therewith or with the sale thereof), 3 per centum. * * *;

(2) Other automobile chassis and bodies and motorcycles (including tires, inner tubes, parts, and accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum. * * *;

(3) Tires, inner tubes, parts, or accessories for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 2½ per centum. * * *

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(U.S.C., Title 26, Sec. 881.)

Revenue Act of 1928, c. 852, 45 Stat. 791, 866:

SEC. 424. REFUND OF AUTOMOBILE ACCESSORIES TAX

(a) No refund shall be made of any amount paid by or collected from any manufacturer, producer, or importer in respect of the tax imposed by subdivision (3) of section 600 of the Revenue Act of 1924, or subdivision (3) of section 900 of the Revenue Act of 1921 or of the Revenue Act of 1918, unless either—

(1) Pursuant to a judgment of a court in an action duly begun prior to April 30, 1928; or

(2) It is established to the satisfaction of the Commissioner that such amount was in excess of the amount properly payable upon the sale or lease of an article subject to tax, or that such amount was not collected, directly or indirectly, from the purchaser or lessee, or that such amount, although collected from the purchaser or lessee, was returned to him; or

(3) The Commissioner certifies to the proper disbursing officer that such manufacturer, producer, or importer has filed with the Commissioner, under regulations prescribed by the Commissioner with the approval of the Secretary, a bond in such sum and with such sureties as the Commissioner deems necessary, conditioned upon the immediate repayment to the United States of such portion of the amount refunded as is not distributed by such manufacturer, producer, or importer, within six months after the date of the payment of the refund, to the persons who purchased for purposes of consumption (whether from such manufacturer, producer, importer, or from any other person) the articles in respect of which the refund is made, as evidenced by the affidavits (in such form and containing such statements as the Commissioner may prescribe) of such purchasers, and that such bond, in the case of a claim allowed after February 28, 1927, was filed before the allowance of the claim by the Commissioner.

* * * * *

Treasury Regulations 47, Revised December 1921:

ART. 15. *Definition of parts.*—A "part" for an automobile truck, automobile wagon, other automobile, or motorcycle is any article designed or manufactured for the special

purpose of being used as or to replace a component part of any such vehicle and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use and which is primarily adapted only for use as a component part of such vehicle.

* * * * *

Mere stock or commercial commodities, such as bolts, nuts, washers, screws, etc., though used as components for such vehicles, are not "parts" within the meaning of subdivision (3). Articles, however, which ordinarily would be classed as commercial commodities become parts when, because of their design or construction, they are primarily adapted for use as component parts of such vehicles.

* * * * *

ART. 16. *Definition of accessories.*—An "accessory" for an automobile truck, automobile wagon, othe automobile, or motorcycle is any article designed to be attached to or used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for use in connection with such vehicle, whether or not essential to its operation.

* * * * *

Articles which have a general commercial use and which are not especially designed and peculiarly adapted for use in connection with automobile trucks, automobile wagons, other automobiles, or motorcycles are not subject to tax as "parts" or "accessories." * * *.

If any doubt exists as to the special adaptability of any article, the fact of its sale by the manufacturer to be used with an

automobile, or to an automobile accessories dealer, would determine its taxability.

* * * * *

Treasury Regulations 17, Revised August 1924:

ART. 16. *Parts or accessories. Definition of parts.* A "part" for an automobile truck, automobile wagon, or other automobile chassis or body, or motorcycle, is any article designed or manufactured for the special purpose of being used as or to improve, repair, or replace a component part of any such vehicle or article, and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use or which is primarily adapted only for use as a component part of such vehicle or article.

*Definition of accessories.* An "accessory" for an automobile truck, automobile wagon, or other automobile chassis or body, or motorcycle, is any article designed to be attached to or used in connection with such vehicle or article to add to its utility or ornamentation, or any article which is primarily adapted for use in connection with such vehicle or article whether or not essential to its operation or use.

* * * * *

Articles which have a general commercial use and which are not especially designed or peculiarly adapted for use in connection with automobile truck, automobile wagon, or other automobile chassis or bodies, or motorcycles, are not subject to tax as "parts or accessories." * * *

Mere stock or commercial commodities such as bolts, nuts, washers, screws, etc., though used as components for taxable ar-

ticles, are not "parts" within the meaning of subdivision (3) when sold separately. Articles, however, which ordinarily would be classed as commercial commodities become parts when, because of their design or construction, they are primarily adapted for use as component parts of such vehicles.

* * * * *

Parts or accessories for automobile trucks, automobile wagons, other automobiles, or motorcycles, primarily adapted for use on or in connection therewith are taxable when sold by the manufacturer thereof regardless of the purpose for which used.

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